



Department for Levelling Up,
Housing & Communities

**Department for Levelling Up, Housing and
Communities**

Fry Building
2 Marsham Street
London
SW1P 4DF

Tel: 030 3444 0000
www.gov.uk/dluhc

Mr Owen Boswarva



Date: **18 October 2022**

Dear Mr Boswarva,

Internal review under the Freedom of Information Act 2000 - 18881014

Thank you for your request for a review received on 26 August 2022. We are sorry that you are dissatisfied with our response to your request under the Freedom of Information Act 2000. I am the review officer appointed to undertake the internal review and I am writing to provide a response. I was not involved in the original response to your request.

Background

On 26 June 2022 you requested the following information: *'I would like to make a new information request. This request also relates to DCLG's 2016 consultation 'Strengthening Local Government Transparency: Consultation on changes to the Local Government Transparency Code 2015'.*

Please provide the following information:

- 1. The number of responses received to the consultation.*
- 2. A list of organisations that submitted responses to the consultation.*
- 3. A copy of any response received from the Cabinet Office.
Please also provide, if held:*
- 4. Any breakdown or analysis of responses to the questions in the consultation.*
- 5. The most recent unpublished version or draft of any consultation outcome or Government response to the consultation.*

6. Any correspondence, meeting minutes, or other record that relates to the decision not to publish the outcome of the consultation.'

On 23 August 2022, the Department wrote to you releasing information in response to questions 1 and 2 above. In relation to question 3, we confirmed that we held no information falling within scope. Information relating to question 4, 5 and 6 were not disclosed with reliance on section 35(1)(a) FOIA. In addition to section 35, we also explained that there was also personal data which was exempt under section 40 (2) FOIA.

On 26 August 22, your requested and internal review: *'Thank you for your reply to my information request, your ref 18881014. I am satisfied with the information provided in response to points 1-3 of my request.*

However, I would like to request an internal review of DLUHC's response to points 4-6 of my request. I do not think DLUHC's application of the exemption in section 35(1)(a) of the FOI Act is correct.

I have inferred from your response that DLUHC holds information in scope of each of my points 4-6.

My working assumption is that all or most of that information will have been produced shortly after the end of the consultation period in 2016, and will now be at least several years old.

I also assume that the Government does not intend to publish an outcome and response to the consultation, given that more than six years has passed since the consultation closed.

There have been two changes of Government since the consultation closed.

I doubt there is any live policy process to protect. There have been no signs from the current Government that it intends to revive the proposals in the consultation or further develop the Local Government Transparency Code. Were the Government to do so, I think it is unlikely that the formulation and development of policy in this area would rely significantly on analysis of responses to the 2016 consultation, or on other information within scope of my information request.

Given the timing of my request, it is implausible that release of the information I have requested has any significant potential to damage policymaking. I cannot see that the public interest in maintaining the section 35(1)(a) exemption outweighs the public interest in disclosure.'

Appeals Officer's Response

I have reviewed the response sent you and have contacted the relevant officials who were involved in the initial search. I would make the following points:

1.Policy making

Section 35(1)(a) FOIA covers any information relating to the formulation and development of government policy. As is widely accepted now in the light of the Commissioner's own guidance and case law decisions, the term "relates to" is capable legitimately of being interpreted broadly. If there is sufficient link between

the information in question and a government policy or policies, then the exemption will be engaged.

I have considered the information the Department holds within scope of your request, and believe it meets the criteria set out above.

The purpose of Section 35(1)(a) is to protect the integrity of the policy making process, and to prevent disclosures which would undermine this process and result in less robust, well considered or effective policies. It ensures a safe space to consider options in private, in this case matters related to the policy surrounding the Local Government Transparency Code. I therefore believe that section 35(1)(a) FOIA was correctly engaged.

2. Public interest

Section 35(1)(a) is a “qualified exemption” and therefore subject to a public interest test.

In its response to you the Department confirmed that there is always a degree of benefit in making information available as it increases public participation in decision making and aids the transparency and accountability of government.

However, there is also a strong public interest in ensuring that there is an appropriate degree of safe space in which officials can gather and assess information and provide advice to Ministers which will inform their eventual policy decisions. In turn Ministers must feel able to consider the information and advice before them and be able to reach objective, fully informed decisions without impediment and free from distraction that such information will be made public. Such safe space, it is widely accepted, is needed where it is appropriate to safeguard the effectiveness of the policy process. These considerations carry most weight where the decision on policy has yet to be taken and the formulation or development process is still “live”, as in this case.

I therefore believe that the public interest is weighted in favour of withholding the information at this time.

In addition to section 35, I agree that some of this information contains personal data. This information is exempt from disclosure under section 40(2) of the FOI Act as it is personal, about another individual and, as that person could not reasonably expect that his or her personal information would be disclosed, doing so would breach UK data protection legislation.

Conclusion

Having reviewed this case I have concluded that the Department responded to your request correctly. The requested information was correctly withheld under the exemptions listed and the public interest is weighted in favour of continuing to withhold the information.

If you are unhappy with the outcome of this internal review, you can ask the independent Information Commissioner to investigate. The Information Commissioner can be contacted at email address casework@ico.org.uk or use their online form at ico.org.uk/concerns or call them on 0303 123 1113.

Yours sincerely

DLUHC FOI Internal Reviews